

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA

FILED
DEC 06 2007


CLERK

SOUTHERN DIVISION

TOM BRAUN,

Plaintiff,

vs.

DAVID MILES, AND DEPUTIES
HODGEKISS, IRELAND, LAENSCH,
NASH, AND KUHN; CAROL MILLAN,
RICHARD ZIEGLER, DAVID WEITALA,
BERNIE SCHUMACHER AND JERRY
FISHER,

Defendants.

CIV. 07-4171

MEMORANDUM OPINION AND
ORDER DENYING PETITION TO
PROCEED IN FORMA
PAUPERIS AND DISMISSING
COMPLAINT

Plaintiff, Tom Braun, has applied to proceed in forma pauperis in this action which involves the same facts as the action for which summary judgment was entered against Tom Braun on September 28, 2007. *See Braun v. Davison County Sheriff and Department*, No. 06-4053 (D.S.D. Doc. 47).

The doctrine of res judicata bars a later suit when (1) the first suit resulted in a final judgment on the merits; (2) the first suit was based on proper jurisdiction; (3) both suits involved the same cause of action; and (4) both suits involved the same parties or their privies. *Lovell v. Mixon*, 719 F.2d 1373, 1376 (8th Cir.1983); *United States E.P.A. v. City of Green Forest*, 921 F.2d 1394, 1403 (8th Cir.1990). The res judicata effect of a prior judgment is a question of law. *See United States ex rel. Yankton Sioux Tribe v. Gambler's Supply, Inc.*, 925 F.Supp. 658, 663 (D.S.D. 1996) . The purpose of the doctrine of res judicata is that a final judgment on the merits of an action precludes

relitigation of issues that were or could have been raised in that action. *Id.*


The Court has carefully considered the matter and determined that the doctrine of res judicata applies in the case at hand. It would be futile for this Court to grant the application to proceed in forma pauperis. Accordingly,

IT IS ORDERED:

1. That Plaintiff's Application to Proceed Without Prepayment of Fees (Doc.3) is denied; and
2. That the action is dismissed with prejudice.

Dated this 6th day of December, 2007.

BY THE COURT:


Lawrence L. Piersol
United States District Judge

ATTEST:
JOSEPH HAAS, CLERK

By: Shelly Margulies, Deputy
(SEAL)